

REMARKS

Applicant requests reconsideration of the present application in view of the foregoing amendment and the discussion that follows. The status of the claims is as follows. Claims 1-70 were originally filed. Claims 1-5, 12, 17, 18, 20-24 and 71-98 are currently pending. Claims 26-70 were previously withdrawn from consideration and these claims were canceled previously without prejudice to Applicant's filing of divisional applications to what has been determined in a previous Office Action to be the separately patentable subject matter thereof. Claims 6-11, 13-16, 19 and 25 were also canceled previously. Claim 71 has been amended herein.

The Amendment

Claim 71 was amended to recite that the ledge extends from the top edge of the well to an area adjacent a bottom edge of the at least one wall. Support therefor is in the Specification, for example, page 14, lines 21-24, and Figs 3-7.

Rejections under 35 U.S.C. §102

Claims 1, 2, 5, 12, 20-21, 24, 71-73, 76, 79, 80, 84-86, 89-91 and 95 were rejected under 35 U.S.C. 102(b) as being unpatentable over Earley, *et al.* (WO 94/08759 A1) (Earley). The rejection referred to "US Pat. 94/08759." Applicant believes that this is a typographical error and that WO 94/08759 A1 was intended. If Applicant is incorrect, Applicant reserves the right to address any rejection under an intended U.S. Patent.

The Office Action contends that Earley discloses a microtiter plate comprising multiple wells, which, when given their broadest reasonable interpretation, reads on claims drawn to a device with a housing, a support, wells with sloped walls and a ledge. The Office Action further asserts that the reference also teaches the use of lids with the microtiter plate.

With regard to Claim 1, Earley does not disclose or suggest at least one wall, in addition to the walls of the well of the present devices, extending upwardly from a top edge of the well to the top of the housing wherein the at least one wall is at least partially sloped in an area thereof adjacent the well. As indicated on page 7, lines 10-11, and Figs. 7-8, Earley's disclosure relates only to standard ninety six well microtiter plates. As can be seen from Fig. 8, the wells of Earley's microtiter plate do

not have, nor is there any suggestion of, at least one wall extending upwardly from a top edge of the well to the top of the housing wherein the at least one wall is at least partially sloped in an area thereof adjacent the well. As a matter of fact, Earley's teaching is completely devoid of any disclosure of additional walls leading from his well.

The Office Action responds to Applicant's argument with the contention that Earley teaches a microtiter plate with a lid or cover. The Office Action contends that a microtiter plate cover inherently has the structure of a flat surface with walls extending down to the microtiter plate to fit in the grooves of the microtiter plate to create a snug fit. As such, continues the Office Action, when viewed from the microtiter plate, these walls of the cover extend upward from an area adjacent a top edge of the well to a top portion of the housing and that there is at least one wall at least partially sloped in an area thereof adjacent the well where the plate and cover are interpreted as comprising the housing.

Applicant respectfully disagrees with the above comments in the Office Action with regard to the present claims. Claim 1 recites that the at least one wall, which is in addition to the walls of the well, extends upwardly from a top edge of the well (not an area adjacent to a top edge as stated in the Office Action) to a top portion of the housing. Clearly, adjacent wells of the microtiter plate do not satisfy this limitation. Earley does not disclose or suggest at least one wall extending upwardly from a top edge of the well to the top of the housing wherein the at least one wall is at least partially sloped in an area thereof adjacent the well.

The Office Action asserts that the inherent structure of microtiter plate covers is a horizontal top portion with walls extending down from this top portion to fit the grooves on the microtiter plate. However, Earley does not disclose or suggest any additional features such as walls on the cover that extend into the wells and grooves on a microtiter plate. No evidence of such additional features has been made of record either by disclosure in a reference or by an Examiner's Affidavit.

Furthermore, even if one were to assume for the sake of argument that such features were disclosed in the reference, Applicant submits that such additional features do not satisfy the claim limitation of a wall(s), in addition to the walls of the wells, where the wall extends upwardly from a top edge of the well to a top portion of the housing and is at least partially sloped in an area thereof adjacent the well. As

best that Applicant can understand without the benefit of any disclosure in a reference or any affidavit from the Examiner, such proposed features of a cover, when such a cover is seated in the microtiter plate well, would extend downwardly into the well from an area adjacent a top edge of the well, which, in a conventional microtiter plate, also corresponds to the top of the microtiter plate housing. See, for example, Fig. 8 of Earley, which depicts a standard microtiter plate 34 with wells. It is clearly evident that the top edge of the well and the top of the housing correspond. When the imagined cover of the Office Action is placed snugly into the well, the "additional wall" would be seated in the well and would not extend from the top of the well to the top of the housing whether the top of the housing is viewed as the top of the microtiter plate or the cover. Accordingly, such an imagined structure would not meet the claim limitation of extending upwardly from a top edge of the well to the top of the housing. In any event, as mentioned above, the point is moot since Earley does not disclose or suggest any additional features on the cover that extend into the wells.

The Office Action asserts that, when viewed from the microtiter plate, the "walls of the cover" extend upward from an area adjacent a top edge of the well to a top portion of the housing. This is unpersuasive for at least two reasons. First, the claim language does not contain the word "adjacent." Second, the "wall of the cover" that supposedly extends into the well providing a snug fit, when viewed from the standpoint of the well, would not extend upwardly from a top edge of the well. The "wall of the cover" would extend downwardly from a top edge of the well.

The Office Action contends that Applicant's use of the phrase "imagined cover" is clearly erroneous. Applicant used the phrase to refer to the cover alleged in the Office Action to possess numerous inherent features. Applicant accepts that some of the references mention a cover for a microtiter plate. However, none of the references discloses a cover having the features relied on in the Office Action. As a matter of fact, Kwasnoski, *infra*, and Daniel, *supra*, both of which references actually provide drawings showing covers for a microtiter plate, do not disclose any additional features that extend from the cover into the wells of the microtiter plate, not do they disclose any grooves in the microtiter plate. The Office Action contends, if the cover is "imagined", then how can the references that have been relied on for this teaching "explicitly" teach such a cover. The answer to this question is that the references do

not explicitly teach a cover with the features asserted. The Office Action appears to recognize this because the Office Action refers to such features as "implicit," which is the opposite of explicit.

A further point is that, when a lid is placed over the known microtiter plate, one merely has a lid on top of the housing of the microtiter plate. The lid does not become part of the microtiter plate housing. The Office Action appears to take the position that, when a lid is placed over the microtiter plate, given its broadest interpretation, the whole structure may be viewed as the housing. The problem with such an assertion is that, if a cover placed on a microtiter plate becomes part of the housing, then, there is no well. Rather, one has an enclosed chamber.

Another point is that it has long been held that discovery of a problem is one consideration in determining the patentability of a claimed invention. *In re Atkinson*, 102 F.2d 882, 41 USPQ 308 (C.C.P.A. 1939); *In re Nomiya*, 509 F.2d 566, 184 USPQ 607 (C.C.P.A. 1969) As Applicant indicated in the Specification (page 26, lines 19-25, and paragraph bridging pages 23 and 24), for reactions involving biopolymers particularly in the form of an array of biopolymers, a small quantity of sample is distributed over the surface of the support to which the biopolymers are attached. Also, during reactions involving biopolymers on a support surface, it is often desired to heat the materials in contact with the surface of a support in a well. The heating of the support should be carried out in a manner that minimizes or avoids loss of liquid in the well of the device. This is particularly true where the liquid is sample, which is present in a relatively small quantity. Loss of liquid may occur by evaporation out of the device, by evaporation and condensation on the surface of the device, by wicking out of the well of the device and so forth. As one might appreciate, loss of even small quantities of the sample can be detrimental to the accuracy of an assay and can also result in waste of sample, which is already in limited quantity.

As the Office Action appreciates, the wicking problem recognized by Applicant is contrary to the expectations of one skilled in the art. The Office Action indicates that one does not put liquid in wells of a microtiter plate with the expectation that the liquid will not remain in there. Rather, continues the Office Action, one expects that liquid disposed in the well will stay there. On the contrary, Applicant has discovered that, in situations where a small volume of liquid forms a thin layer above the surface

of a substrate or support, which comprises a plurality or an array of biopolymers, wicking of liquid from the well may occur. The structural features of the devices of the present invention avoid such wicking.

It is Applicant's teaching and invention to avoid wicking by various structural features of the claimed devices. Accordingly, the holding in *In re Rose* is not applicable since the present invention goes far beyond mere differences in size of an article of manufacture. The references do not teach or suggest the structural features set forth in the claims, nor do the references teach the problem solved by the present invention.

Earley does not disclose or suggest the device of Claim 2 wherein the at least one wall is designed such that the corners thereof are radiused. There is no disclosure in Earley regarding such a device.

The Office Action responded to the above generally by asserting that Applicant simply stated that the references do not teach the limitations of the dependent claims without providing any rationale. This is not persuasive as the Office Action did not point to any disclosure in Earley or in any of the references of features referred to in the dependent claims. For example, with respect to Claim 2, the structural feature is the at least one wall (i.e., the wall extending upwardly from a top edge of the wall to the top of the housing) designed such that the corners thereof are radiused. Applicant's rationale is that Earley, and the other references, are devoid of a teaching or suggestion of such a structural feature. This is an example of the rationale behind Applicant's pointing out that the reference does not disclose certain features of certain dependent claims. Even if one were to assume for the sake of argument that the independent claims were properly rejected, such dependent claims would be patentable over the art because they are directed to elements not disclosed or suggested in the references cited or in the imagined cover with depending features that extend into the well of a microtiter plate.

Applicant respectfully points out that the burden is on the Office to show that the claims are anticipated by or obvious in view of a reference. In each instance of the dependent claims discussed, Applicant is demonstrating that the reference is deficient in not teaching or suggesting the elements of the dependent claims as discussed above. As such, the claims are not properly rejected over the reference. The Office Action has not identified such elements in the teaching of the reference.

For the reasons set forth above, Earley does not disclose or suggest the device of Claim 5 wherein the at least one wall is sloped from the edge of the well to a top portion of the housing. There is no disclosure of such a structural feature explicitly or inherently.

Earley does not disclose or suggest the device of Claim 12 because Earley fails to teach or suggest an at least one wall that is a circular wall extending from the edge of the well to a top portion of the device.

Claim 17 recites that the partially sloped wall is sloped at least about 35 degrees and Claim 18 recites that the at least partially sloped wall is sloped at about 30 to about 55 degrees and Claim 98 recites that the at least partially sloped wall is sloped at about 15 to about 60 degrees. There is no disclosure of record relating to the recited degree of sloping. Since there is no such disclosure, dependent Claims 17, 18 and 98 are separately patentable over the art. The above features are not merely a matter of design optimization. These features provide for the avoidance of wicking in the presently claimed devices.

Earley does not disclose or suggest the device of Claim 20 wherein a surface of the support comprises an array of biopolymers or wherein the biopolymers are polynucleotides (Claim 21).

Earley does not disclose or suggest the device of Claim 24 wherein the device comprises a single well and a cover. If, as asserted in the Office Action, the cover on the microtiter plate of Earley is the top of the housing, then the device of Earley would not further comprise a cover and, in particular, a cover on a single well since the conventional microtiter plate has multiple wells. The Office Action contends that such a conclusion on the part of Applicant is erroneous because there are still wells in the microtiter plate and the plate is referred to as a 96-well microtiter plate. However, the claim is directed to a device comprising a single well with a cover, which is clearly not the case with a 96-well microtiter plate with a cover. Furthermore, the Office Action is asserting that the cover is now part of the housing of the device and contributes structural features required by the claim. See, for example, page 7, last line of paragraph 11, of the Office Action, which states "as the plate and cover are interpreted as comprising the housing." Applicant submits that, if such is the case, then the device of the Office Action does not have a cover separate from the device itself.

The Advisory Action previously indicated agreement that the references do not show a ledge as recited in the claims. However, the present Office asserts that this was in error and that upon reconsideration of the references, this feature is taught by the references. In support of this assertion, the Office Action states that grooves that are inherently present on the base of a microtiter plate to allow for a cover to fit over the plate are interpreted to meet this feature of a ledge.

First of all, neither Earley, nor any of the other references for that matter, discloses or suggests such grooves. This appears to be recognized by the Office Action, which refers to inherent features of a microtiter plate. Again, there is no evidence of record, either in the references or by Examiner's Affidavit to support such an assertion. Furthermore, as can be seen from Fig. 8, the wells of Earley's microtiter plate do not have, nor is there any suggestion of, a ledge that extends from the edge of the well to an area adjacent the bottom edge of the at least one wall, i.e., the wall that extends from an area adjacent a top edge of the well to the top of the housing (see Claim 71, for example). As a matter of fact, Earley's teaching is completely devoid of any disclosure of additional walls leading from his well and of a ledge that extends from the top edge of the well to an area adjacent the bottom edge of the at least one wall. Accordingly, Earley does not disclose or suggest a device as claimed in Claim 71.

Earley does not disclose or suggest the device of Claim 79 because Earley does not teach or suggest an at least one wall that is fully sloped from the ledge to a top portion of the housing.

Earley does not disclose or suggest the device of Claim 80 wherein the ledge is rectangular in shape about the well. The Office Action further contends that it would have been obvious to use a rectangular ledge for the plate as opposed to a circular one as such a modification is a simple optimization of the assay device and is not thought to change the device in any substantial manner. However, as can be seen from Fig. 8, the wells of Earley's microtiter plate do not have, nor is there any suggestion of, a ledge (either circular or rectangular) that extends from the edge of the well to the at least one wall (see Claim 71, for example).

Earley does not disclose or suggest the device of Claim 84. There is no disclosure in Earley of a device that comprises at least two walls that are fully sloped from a ledge adjacent the edge of the well to a top portion of the device.

Earley does not disclose or suggest the device of Claim 85 because Earley fails to teach or suggest a device that comprises two opposing walls that are fully sloped from a ledge adjacent the edge of the well to the top portion of the device and two opposing walls extending vertically from the ledge to the top portion.

Earley does not disclose or suggest the device of Claim 86 because Earley fails to teach or suggest a device that comprises four walls that are fully sloped from a ledge adjacent the edge of the well to the top portion of the device.

Earley does not disclose or suggest the device of Claim 89 because Earley fails to teach or suggest a device having a ledge that comprises a polished surface that prevents wicking of a liquid along the ledge.

Rejections under 35 U.S.C. §103

Claims 3, 4, 17, 18, 22, 23, 74, 75, 77, 78, 81-83, 87, 88, 93, 94 and 96-98 were rejected under 35 U.S.C. 103(a) as being unpatentable over Earley, *et al.* (WO 94/08759 A1) (Earley).

Earley does not disclose or suggest the device of Claim 3 wherein the at least one wall is at least partially sloped in an area thereof adjacent the well.

Earley does not disclose or suggest the device of Claim 17 wherein the partially sloped wall is sloped at least about 35 degrees.

Earley does not disclose or suggest the device of Claim 18 wherein the at least partially sloped wall is sloped at about 30 to about 55 degrees.

Earley does not disclose or suggest the device of Claim 22 wherein the slope of the partially sloped wall is constant.

Earley does not disclose or suggest the device of Claim 23 wherein the slope of the partially sloped wall is not constant.

Earley does not disclose or suggest the device of Claim 78 wherein the at least one wall comprises a partially sloped portion in an area adjacent the ledge and a vertical portion extending from the partially sloped portion to a top portion of the device.

Earley does not disclose or suggest the device of Claim 81 wherein the ledge is circular in shape about the well.

Earley does not disclose or suggest the device of Claim 83 wherein the at least one wall is a circular wall extending from a ledge adjacent the edge of the well to a top portion of the device.

Earley does not disclose or suggest the device of Claim 96 wherein the at least one wall is designed such that any corners thereof are distant from the edge of the well by about 0.1 inch to about 1 inch.

The Office Action recognizes that the reference does not teach the aforementioned limitations of the above claims. However, the Office Action contends that it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to modify the dimensions of the device of Earley to the specific lengths, widths and angle sizes required by the present claims because it would have been obvious matter of design choice since such a modification would have involved a mere change in the size of components. Reference is then made to *In re Rose*.

Applicant submits that the holding in *In re Rose* is not applicable since the present invention goes far beyond mere differences in size of an article of manufacture. As set forth above, the references do not teach or suggest the structural features set forth in the claims. In addition, as discussed above, these structural features provide for avoidance of wicking in the wells of the presently claimed devices.

The Office Action asserts that it would have also been obvious to use a rectangular ledge for the plate as opposed to a circular one, as such a modification is a simple optimization of the assay device and is not thought to change the device in any substantial manner. Applicant addressed this issue in the rejection of Claim 80 under 35 U.S.C. 102(b) above. None of the claims above rejected under 35 U.S.C. 103(a) contains a recitation of a rectangular ledge.

Claims 1-5, 12, 17-18, 20-24, 71-91 and 93-98 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pedley (GB 2 197 720 A) in view of Kwasnoski, *et al.* (U.S. Patent No. 6,423,948 B1) (Kwasnoski). The disclosures of Pedley and Kwasnoski are discussed in a previous response.

Pedley does not disclose or suggest at least one wall in addition to the wall(s) of the well, extending upwardly from a top edge of the well to the top of the housing wherein the at least one wall is at least partially sloped in an area thereof adjacent the well (Claim 1) or wherein a ledge extends from the edge to the at least one wall

(Claim 71). Pedley's teaching is completely devoid of any disclosure of additional walls leading from his well to the top of his housing. Pedley's teaching is also devoid of any teaching regarding a ledge extending from the top edge of a well to an area adjacent a bottom edge of the at least one wall.

The Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to use the cover of Kwasnoski with the microtiter plate of Pedley because covers are routinely used in the art on microtiter plates to prevent loss of sample or contamination.

Even if for the sake of argument one skilled in the art were motivated to make the combination of reference teachings as imagined in the Office Action, the skilled artisan would still not be in possession of the presently claimed inventions. As discussed above, Claim 1 recites that the well has walls and, furthermore, the housing has at least one wall that extends upwardly from a top edge of the well to the top of the housing wherein the at least one wall is at least partially sloped in an area thereof adjacent the well. See, for example, Figs. 1A and 1B of Kwasnoski, which depict a standard microtiter plate 110 with wells 114. It is clearly evident that the top edge of the well and the top of the housing correspond. When the imagined cover of the Office Action is placed snugly into the well, the "additional wall" would be seated in the well and would not extend from the top of the well to the top of the housing whether the top of the housing is viewed as the top of the microtiter plate or the cover. Accordingly, such an imagined structure would not meet the claim limitation of extending upwardly from a top edge of the well to the top of the housing. In any event, as mentioned above, the point is moot since Kwasnoski does not disclose or suggest any additional features on the cover that extend into the wells.

As discussed above, the Office Action asserts that the structure of microtiter plate covers is a horizontal top portion with walls extending down from this top portion to fit the grooves on the microtiter plate. As with the Earley reference, Kwasnoski does not disclose or suggest any additional features such as walls on the cover that extend into the wells. See, for example, Fig. 6 of Kwasnoski, which shows a cover but does not depict any additional features that extend from the cover into the wells of the microtiter plate.

As mentioned above, no evidence of such additional features has been made of record either by disclosure in a reference or by an Examiner's Affidavit. Even if

one were to assume for the sake of argument that such features were disclosed in the reference, Applicant submits that such additional features do not satisfy the claim limitation of a wall(s), in addition to the walls of the wells, where the wall extends upwardly from a top edge of the well and is at least partially sloped in an area thereof adjacent the well. As best that Applicant can understand without the benefit of any disclosure in a reference or any affidavit from the Examiner, such proposed features of a cover would extend downwardly into the well from an area adjacent a top edge of the well. In any event, as mentioned above, the point is moot since Kwasnoski does not disclose or suggest any additional features on the cover that extend into the wells.

For the reasons set forth above with regard to the rejection over Earley, each of the dependent claims as identified above is separately patentable over the combination of Pedley and Kwasnoski. The combination of the reference teachings does not disclose or suggest the claimed elements of the dependent claims and these claims are patentable over the references without regard for the patentability of the base claims, which, nonetheless, are patentable over the art as explained above. As discussed above, the specific lengths, widths and angle sizes are more than an obvious matter of design choice. Such structural features are responsible for reducing or eliminating wicking in the presently claimed embodiments of the invention.

Claims 1-5, 12, 17, 18, 20-24, 71-91 and 93-98 were rejected under 35 U.S.C. 103(a) as being unpatentable over Balch (U.S. Patent No. 6,083,763) in view of Kwasnoski. The reasoning behind the rejection in the Office Action is essentially as discussed above for the rejection under Earley and under Pedley in view of Kwasnoski. For the reasons set forth above, Claims 1, and each of the dependent claims as identified above, as well as Claim 71, and those claims dependent therefrom, are separately patentable over the combination of Balch and Kwasnoski.

Claims 1-20, 22-25, 71-90 and 92-97 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman, *et al.* (U.S. Patent No. 4,596,723) (Kaufman) in view of Kwasnoski. The Office Action contends that Kaufman discloses an immunoassay wherein antigen solutions are allowed to stand overnight in wells of polystyrene or polypropylene microtiter plates permitting adsorption of protein to the well bottom and walls. The Office Action further contends that it would have been

obvious to one of ordinary skill in the art at the time of the invention to use the cover of Kwasnoski with the microtiter plate of Kaufman because covers are routinely used in the art on microtiter plates to prevent loss of sample or contamination.

The reasoning behind the above rejection in the Office Action is essentially as discussed above for the rejection under Earley and under Pedley in view of Kwasnoski. For the reasons set forth above, Claims 1, and each of the dependent claims as identified above, as well as Claim 71, and those claims dependent therefrom as identified above, are separately patentable over the combination of Kaufman and Kwasnoski.

Applicant notes that the following previous rejections were not repeated in the present Office Action:

1. Claims 1-19, 22-25, 71-89 and 93-97 under 35 U.S.C. 103(a) as being unpatentable over Daniel (U.S. Patent No. 4,919,894).

2. Claims 1-19, 22-25, 71-89 and 93-97 under 35 U.S.C. 103(a) as being unpatentable over Matkovich, *et al.* (U.S. Patent No. 4,828,386) (Matkovich) in view of Kwasnoski.

3. Claims 1-19, 22-25, 71-89 and 93-97 under 35 U.S.C. 103(a) as being unpatentable over Calenoff, *et al.* (U.S. Patent No. 4,844,966) in view of Kwasnoski.

4. Claims 1-19, 22-25, 71-89 and 93-97 under 35 U.S.C. 103(a) as being unpatentable over Provonchee (U.S. Patent No. 4,701,754) in view of Kwasnoski.

5. Claims 1-19, 22-25, 71-89 and 93-97 under 35 U.S.C. 103(a) as being unpatentable over Cassin, *et al.* (U.S. Patent No. 5,910,287)(Cassin).

Applicant concludes that the above rejections stand withdrawn, having not been repeated in the present Office Action.

Summary

A *prima facie* case of obviousness has not been made. Most of the above references disclose or suggest nothing more than conventional multi-well microtiter plates. Some references disclose various nuances of the conventional microtiter plates but do not disclose or suggest the structural features of the devices of the present invention as discussed above with regard to each reference. None of the references discloses or suggests the problem solved by the present invention. Applicant submits that, in order for one to modify the deficient teachings of the

references to achieve the devices of the present invention, one would have to use Applicant's disclosure because the references do not teach anything relevant to the wicking problem addressed by Applicant and the structural features that avoid this problem particularly as they relate to supports comprising a plurality or array of biopolymers.

The fact that a cover might be used with a microtiter plate does not disclose or suggest the inventions of the present claims as explained above. As discussed above, the Office Action asserts that the structure of microtiter plate covers is a horizontal top portion with walls extending down from this top portion to fit the grooves on the microtiter plate. No evidence of such additional features has been made of record either by disclosure in a reference or by an Examiner's Affidavit. As a matter of fact, those references cited in the Office Action that do show drawings of a cover do not depict any such features as proposed in the Office Action. In addition, even if one were to assume for the sake of argument that such features were disclosed in the reference, Applicant submits that such additional features do not satisfy the claim limitation of a wall(s), in addition to the walls of the wells, where the wall extends upwardly from a top edge of the well to the top of the housing and is at least partially sloped in an area thereof adjacent the well. Such features of a cover as proposed would extend downwardly into the well from an area adjacent a top edge of the well as recited in Claim 1. In any event, as mentioned above, none of the references discloses or suggests any additional features on the cover that extend into the wells. In addition, some of the claims depending from Claim 1 are patentable over the art apart from the patentability of Claim 1.

None of the references shows or suggests a ledge extending from the edge to the at least one wall such as recited in Claim 71. Claim 71 and those claims depending therefrom are patentable over the art. Furthermore, some of the claims depending from Claim 71 are patentable over the art apart from the patentability of Claim 71.

The issue of a declaration by Applicant was raised in the Office Action and in previous Office Actions. Applicant submits that the independent and dependent claims comprise structural features that are not disclosed or suggested by the references. Accordingly, Applicant believes that such a declaration is not warranted because the Office Action has not met its burden of proof that the inventions as

claimed in the independent and dependent claims are taught or rendered obvious by the disclosures of the references. Since a *prima facie* case of obviousness has not been shown, there is no need for a declaration showing unexpected advantages over the prior art teaching.

Conclusion

Claims 1-5, 12, 17-18, 20-24 and 71-98 satisfy the requirements of 35 U.S.C. §§102 and 103. Allowance of the above-identified patent application, it is submitted, is in order.

Respectfully submitted,

A handwritten signature in cursive script, reading "Theodore J. Leitereg".

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